IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9286 of 2005

Mr Baban Dattu Mhetre .. Petitioner
vs
Mr Bhausaheb Mahadu Vidhate .. Respondents

Mr V.G.Peshave for petitioner
Mr R N Sanghavi for respondent

CORAM; S.B.MHASE J.

DATED 24.4.2006

P.C.

. Heard. Rule, returnable forthwith.

l. The order dated 25.ll.2005 passed by the First Adhoc District Judge and Member, Motor Accidents Claims Tribunal (MACT), Baramati in Misc Application no.ll of 2005 whereby the said misc application is dismissed, is challenged in this petition. The factual position of the matter is as under:

2. The claim application no.l24l of l997 was filed by the respondent as against the petitioner since the respondent has suffered motor accident at the hands of the petitioner. In the said application, initially an order under section l40 of the Motor Vehicles Act was passed directing the petitioner to

deposit the amount of Rs.25,000/- by way of no fault liability with interest. The matter was pending before the Pune Court. However, in November 2000 the said claim application was transferred to the Court of Addl District Judge and MACT at Baramati and thereafter it was numbered as claim application no. 465 of 2000. The said application was decided on l6.9.2004 exparte as against the petitioner. However, since there was an order passed against the petitioner under section l40 of the M V Act, darkhast proceedings was filed by the respondent in the court at Pune. Therefore the petitioner approached his advocate at Pune who reported him that the matter had been transferred to Baramati court. Thereafter the petitioner visited the Baramati court and found that the said claim application was decided on l6.9.2004 exparte. Thereafter the petitioner applied for certified copy of the said order and filed an application for setting aside the exparte order coupled with the delay condonation application on 28.4.2005. The said application was numbered as misc application no. ll of 2005 and since it was dismissed, present petition has been filed.

3. It is undisputed that the amount of Rs.25,000/-

which was payable by way of no fault liability has been paid by the petitioner alongwith interest ands the darkhast filed on the basis of the order under section l40 of the M V Act has been satisfied.

4. It appears that since the claim application was decided on l6.9.2004 exparte and restoration application was filed on 28.4.2005, there was delay of more than l80 days. Whether such delay is to be condoned or not is the question. The learned counsel for the petitioner submits that when the matter was transferred to Baramati court, Baramati court was under an obligation to inform the petitioner the fact of transfer of the said petition to Baramati court. He submits that his advocate at Pune had also not informed earlier the petitioner that the matter was transferred to Baramati court. According to the learned counsel the petitioner came to know for the first time that the matter has been transferred to Baramati court from his advocate when he visited his advocate on ll.3.2005, as he received a notice of darkhast application no. 2l9 of 2004 for recovery of the amount of Rs.25,000 with interest.

5. It is pertinent to note that the learned counsel for the respondent submitted that the

notices were issued and petitioner had knowledge of the matter being transferred to Baramati court. In order to ascertain as to whether the Baramati court had issued notice to the respondent or not, record and proceedings from the Baramati court was called for perusal. Both the advocates have however, gone through the same and have submitted to this court that actually there was no notice issued by the Baramati court to the petitioner after the transfer of the matter to the said court. In fact when the matter was transferred to the Baramati Court, Baramati court was under an obligation to issue notice to the petitioner, especially in view of the fact that neither the advocate for the petitioner was practicing lawyer at Baramati nor attending the matter whenever it is called. In the circumstances this is a fit case for condonation of delay, instead the court below has rejected the said application. Therefore, without entering into the main controversy between the parties, in the interest of justice and fair play, the order passed by the First Adhoc District Judge and Member MACT is required to be set aside and the same is accordingly quashed and set aside. Delay of l80 days in preferring the restoration application is condoned. The court below is directed to hear and dispose of the restoration application on merits in

accordance with law.

. Petition is accordingly disposed of.

(S.B.MHASE J.)